

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2010-132-W**

IN RE: )  
 )  
Application of May River Water )  
Company, Inc. for adjustment of )  
rates and charges for the provision )  
of water service. )  
\_\_\_\_\_ )

**REPLY TO RESPONSE TO**  
**APPLICANT’S MOTION TO DISMISS**  
**MAY RIVER PLANTATION OWNERS’**  
**ASSOCIATION, INC.**

Pursuant to 26 S.C. Code Ann. Reg. 103-829 (Supp. 2010), May River Water System, Inc. (“May River” or “the Company”) herein replies to the Response to Applicant’s Motion to Dismiss May River Plantation Owners’ Association, Inc. (“MRPOA”).<sup>1</sup> In support thereof, May River would respectfully show as follows:

1. Initially, MRPOA concedes in its Response that it “cannot proceed as an association without [legal] representation.” May River, therefore, reasserts its position that the Commission should dismiss MRPOA as a party of record to this proceeding.

2. MRPOA erroneously claims that “[i]n at least four separate ‘matters’ filed with the Commission, the rights of the individual members to be parties of record and to testify in this rate case were asserted.” In support of this assertion, MRPOA cites four documents previously filed by MRPOA in this docket; however, none of the documents supports MRPOA’s position. Two of the cited documents relate solely to requests for night hearings and make no assertions

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<sup>1</sup> Although it is unclear, the Response appears to have been submitted on behalf of both MRPOA and the individual homeowners. For simplicity, and without waiving its position set forth in the Motion to Dismiss, references herein to MRPOA address both May River Plantation Owners’ Association, Inc. and the individual members.

regarding the participation of individual members as parties of record.<sup>2</sup> Of the two remaining documents, one consists of MRPOA's Petition to Intervene and the second consists of the letter of withdrawal of counsel, both of which give rise to May River's Motion to Dismiss.

3. At bottom, the issue before the Commission is whether MRPOA's Petition to Intervene in this matter encompasses a request by the individual members to be included as parties of record to this proceeding. However, the Petition clearly sets forth that MRPOA – not its individual members – sought to participate in this proceeding as a party of record.<sup>3</sup> At no time did the individual members request party status. There has been no notice of their admission as intervenors by MRPOA, any other party of record, or the Commission. The individual members have neither pre-filed testimony, nor alerted the Commission, or any party of record as to their positions or interests in this proceeding. May River has not been placed on notice as to the issues the members purport to present at the hearing in this matter, and to allow their participation as parties of record would violate its rights to administrative due process.<sup>4</sup> The Commission should, therefore, find that the individual members are not parties and, instead, limit

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<sup>2</sup> Letter from Margaret M. Fox, Esquire dated October 20, 2010; Letter from Margaret M. Fox, Esquire dated December 1, 2010.

<sup>3</sup> MRPOA only submitted the Petition on behalf of itself and the individual members. See Petition at 1 (“[MRPOA], on behalf of itself and its members, respectfully submits the within Petition to Intervene in the above-referenced docket.”) (emphasis supplied). However, the Petition itself only sought the intervention of MRPOA. Because the Petition did not seek to make the individual members parties of record, the members, at most, only joined in the request for MRPOA to be admitted as a party. It constrains logic, and the record of this proceeding, for the individual members to now assert they sought party status as well.

<sup>4</sup> The individual members seek the opportunity “to conduct cross-examination of the other parties’ witnesses” suggesting that “it will not be necessary to have more than a few of [its] members asking questions.” Even at this late date, the individual members have not identified which members it purports should be allowed to appear as parties.

their participation to appearing as public witnesses without the rights of cross-examination. See 26 S.C. Code Ann. Regs. 103-804.L, T (Supp. 2010).

4. MRPOA requests that the Commission “affirm the ability of the individual customers to not only be public witnesses, but to cross-examine where appropriate.” However, the participation of the members in this capacity would be contrary to Commission regulations. As noted by May River in its Motion to Dismiss and hereinabove, none of the individual members have pre-filed testimony in this proceeding. If the Commission finds that these members are parties of record, they, therefore, would be precluded from providing testimony to the Commission. See 26 S.C. Code Ann. Reg. 103-845.C (Supp. 2010). To allow these individuals to cross-examine witnesses and to provide testimony which was not pre-filed not only would circumvent the Commission’s regulations, but also would violate May River’s rights to administrative due process in this proceeding.

5. Further, MRPOA incorrectly states that May River seeks “to keep [the] individual households from participating in [this] proceeding.” This assertion is simply incorrect. As indicated in its Motion to Dismiss, May River does not oppose the individual customers’ participation in this proceeding as public witnesses.<sup>5</sup> However, to grant these individuals party

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<sup>5</sup> MRPOA asserts in its Response that “Mr. Highsmith is an individual property owner, and his testimony can and does stand on its own as the testimony of Mr. Highsmith, not of the MRPOA.” While May River does not oppose Mr. Highsmith, as a customer of May River, participating in this proceeding as a public witness as to issues with which he has personal knowledge, portions of his testimony were submitted on behalf of MRPOA in his capacity as its President. Therefore, May River reserves its right to object to any statements Mr. Highsmith may make as an agent of MRPOA. See State ex rel. Daniel v. Wells, 191 S.C. 468, \_\_\_, 5 S.E.2d 181,186 (1939) citing Mullin-Johnson Company v. Penn Mutual Life Insurance Company, 9 F. Supp. 175 (D.C Cal. 1934).

status and afford them the right of cross-examination would contravene Commission regulations and would violate May River's rights to administrative due process.

CONCLUSION

Based on the foregoing and the previously asserted positions, May River Water Company, Inc. respectfully requests the Commission grant its Motion to Dismiss and for such other relief as it may deem appropriate.

s/Benjamin P. Mustian  
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Columbia, South Carolina  
This 5<sup>th</sup> day of January, 2011.